



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 403 OF 2006

In the matter of the estate of M'Ruuti M'Mugambi alias Ruuti Mugambi

M'ETONGA M'RUUTI..... 1ST APPLICANT

NAOMI MUTIRE THURANIRA.....2ND APPLICANT

Versus

STEPHEN MWITHIA M'RUUTI RESPONDENT

R U L I N G

Distribution of estate

[1] When this matter came up before Makau J. on 28/7/2014, parties agreed by consent that the land in issue i.e.LR. NO. NYAKI/THUURA/1235 shall be sub-divided into two portions, that is, $\frac{2}{3}$ and $\frac{1}{3}$ for the Applicants and Petitioner, respectively. Accordingly, Naomi Mutire Thurania was to get $\frac{2}{3}$ of the entire portion whereas Stephen Mwithia M'Ruuti was to get $\frac{1}{3}$ thereof. The court also ordered that each party appoints a surveyor to visit the said land and survey it into the above portions. Each surveyor was to file a report for consideration by the court. The matter came up before me on 6/10/2015. Mr. Kaumbi was present for petitioner and he informed the court that his client was yet to file a surveyor's report. He sought for time and the court allowed him one week to file the surveyor's report. The other parties had filed their surveyor's report already. But, on 21/10/2015 when this case was scheduled for directions before me, Mr. Kaumbi had not filed the surveyor's report. It is important to note that neither Mr. Kaumbi nor his client appeared in court on 21/10/2015. Naomi Thurania and M'Etonga M'Ruuti attended court and insisted on expeditious resolution of this matter. The court noted these facts and directed that it shall give its decision based on the documents filed in court. This ruling is exactly on the manner the estate property herein shall be sub-divided.

[2] On record are two surveyor's reports. One is by Thagishu & Associates. It is undated but it attached a Sketch Map sub-dividing NYAKI/THUURA/1235 as follows;

i) Portion A - 1.73 acres

ii) Portion B - 0.86 acres

The Report stated that the land measures approximately 1.048 Ha. (equivalent of 2.59 acres).

The other report is by Gatome & Associates. It is dated 21/10/2014. It annexed a Sketch Map sub-dividing NYAKI/THUURA/1235 as follows;

- a) **Portion A – 0.83 acres which is $\frac{1}{3}$ of the whole land and is undeveloped; and**
- b) **Portion B – 1.66 acres which is $\frac{2}{3}$ of the total area and is developed with permanent building.**

[3] From the documents filed in court, an extract from the record in the Land Registry for NYAKI/THUURA/1235 shows that the land measures approximately 1.0 Ha. The Report by Gatome & Associates worked on 1.0 Ha. It seems more reliable. It also provides access to both portions of land at two (2) points. The sub-division also seems to be supported by all the beneficiaries except the Petitioner. In the circumstances, and being guided by the professional surveys reports herein, I order that;

- a) **The sub-division of NYAKI/THUURA/1235 shall be done in accordance with the survey report by Gatome & Associates dated 21/10/2014 and the annexed Sketch Map thereto.**

- b) **Accordingly, the estate property shall be distributed in accordance with (a) above.**

Dated, Signed and Delivered in court at Meru this 9th day of November 2015

F. GIKONYO

JUDGE

In the presence of:

Igweta for Kaumbi for petitioner

Naomi Thurania – present

M'Etonga M'Ruuti – present

Court – Ruling delivered in open court.

F. GIKONYO

JUDGE